

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN BENJAMIN NABORS,

Defendant-Appellant.

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UNPUBLISHED  
September 6, 2007

No. 272352  
Kalamazoo Circuit Court  
LC No. 05-000271-FH

Before: Cavanagh, P.J., and Donofrio and Servitto, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to prison terms of seven months' to five years' for the felon in possession conviction and a consecutive two-year prison term for the felony-firearm conviction. He appeals as of right, challenging the trial court's order requiring him to reimburse the cost of his court-appointed attorney. We remand for further proceedings. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

The record does not indicate that the trial court considered defendant's financial circumstances before ordering reimbursement of attorney fees. See *People v Dunbar*, 264 Mich App 240; 690 NW2d 476 (2004). Contrary to the prosecution's argument on appeal, the Legislature's express authorization of a trial court's discretion to impose attorney fees in MCL 769.1k(b)(iii) does not alleviate the due process concerns addressed in *Dunbar*. Accordingly, we vacate the reimbursement order and remand this case to the trial court "for a decision on attorney fees that considers the defendant's ability to pay now and in the future." *People v Arnone*, 478 Mich 908; 732 NW2d 537 (2007). The reimbursement order may be included as part of an amended judgment of sentence. MCL 769.1k(b)(iii). Defendant's convictions and sentences are affirmed in all other respects.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh  
/s/ Pat M. Donofrio  
/s/ Deborah A. Servitto